



**BellSouth Telecommunications, Inc.**

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May 1, 2002

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OFFICE OF THE  
EXECUTIVE SECRETARY  
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VIA HAND DELIVERY

David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Complaint of XO Tennessee, Inc. Against BellSouth Telecommunications, Inc.*

*Complaint of Access Integrated Networks, Inc. Against BellSouth Telecommunications, Inc.*

Docket No. 01-00868

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Petition for Clarification and Reconsideration. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Joelle J. Phillips

JJP:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

In Re: *Complaint of XO Tennessee, Inc. Against BellSouth Telecommunications, Inc.*

*Complaint of Access Integrated Networks, Inc. Against BellSouth Telecommunications, Inc.*

Docket No. 01-00868

**BELLSOUTH TELECOMMUNICATIONS, INC.'S**  
**PETITION FOR CLARIFICATION OR RECONSIDERATION**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits to the Hearing Officer this Petition for Clarification or Reconsideration pursuant to T.C.A. §4-5-317.<sup>1</sup>

The purpose of this Motion is to ensure that BellSouth understands how the application of the Hearing Officer's ruling (the "Initial Order") is intended to affect other offerings that BellSouth may make, so that BellSouth may govern its conduct accordingly.<sup>2</sup> Specifically, BellSouth has other offers presently outstanding where,

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<sup>1</sup> Subsection (a) of this statute allows any party to file a petition for reconsideration within fifteen days after entry of an initial order, and subsection (b) of this statute provides that such a petition "shall be disposed of by the same person or persons who rendered the initial . . . order . . . ." BellSouth, therefore, has properly filed this petition with the Hearing Officer.

<sup>2</sup> This is not to say that the Hearing Officer's decision is not subject to dispute, or that alternative outcomes would not be appropriate based on the undisputed facts of this case. BellSouth is currently evaluating its options with respect to seeking review of the Order and fine. If BellSouth's understanding of the Initial Order as set forth herein is correct, however, BellSouth will not seek review of the Initial Order and on May 16, 2002, will pay in full the fine imposed by the Hearing Officer.

as a condition of receiving value in connection with the purchase of unregulated services, the subscriber must also purchase regulated services offered by BellSouth.

BellSouth understands the Hearing Officer's ruling to preclude BellSouth from providing a non-tariffed value to the purchaser of a regulated service (to wit, offering points based on the amount a customer spends for regulated services). BellSouth does not understand the ruling to preclude BellSouth from simply "linking"<sup>3</sup> regulated and unregulated offerings. BellSouth respectfully requests that the Hearing Officer either clarify that the Initial Order does not preclude BellSouth from simply "linking" regulated and unregulated offerings or, if some other result were intended, that the Hearing Officer reconsider her ruling to limit its impact to the types of offerings in which BellSouth provides a non-tariffed value as a condition on the purchase of regulated services, such as the Hearing Officer found to be the case here.

### **ARGUMENT**

After discussing various TRA rules that address tariffing requirements, the Initial Order provides that:

It cannot be disputed that providing value in exchange for the purchase of a regulated service is a condition or circumstance under which BellSouth furnishes that regulated service. Therefore, pursuant to Authority Rules 1220-4-2-.06(1), BellSouth was required to file a tariff with the Authority regarding the terms of the Select Program.

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<sup>3</sup> The "linking" may or may not involve a discount on the unregulated component of the offer. Of course, to the extent that the "linked" offer included any discount on the regulated component, such a discount would be subject to tariffing requirements.

See Initial Order at 32. BellSouth understands that this language is intended specifically to address the offering that was before the Hearing Officer in this docket, where customers earned points for each dollar spent on regulated and unregulated services, and customers could redeem those points for checks they could spend as they pleased.<sup>4</sup>

BellSouth is concerned, however, that its competitors will attempt to apply the Hearing Officer's findings more broadly in order to effectively cripple BellSouth's marketing programs. For instance, BellSouth's competitors could argue that the language quoted above is intended to apply more broadly to any offering in which a benefit in connection with an unregulated service or product is linked in any manner to the purchase of regulated service. BellSouth's understanding of the Initial Order is that a customer loyalty program that awards BellSouth's local service customers points only for dollars spent purchasing non-regulated services and that only allows those points to be redeemed for non-regulated benefits (such as a credit specifically against the purchased non-regulated services), would not be subject to the requirements of the Initial Order. If this understanding is not correct, the Initial Order could have a very broad and possibly unintended effect not only on

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<sup>4</sup> These checks were issued by BellSouth Select, Inc.

BellSouth's offerings, but also on the offerings of all telecommunications service providers doing business in Tennessee.<sup>5</sup>

As noted above, BellSouth does not believe the Initial Order is intended to require BellSouth to file a tariff in connection with a revised customer loyalty program as described or in connection with a "linked" offer. BellSouth, however, needs to understand the intended scope of the Initial Order so that it can comply with the Initial Order and govern its conduct in the future accordingly. BellSouth, therefore, respectfully asks the Hearing Officer to clarify that the Initial Order was only intended to address situations where BellSouth's offerings actually provided value to the customer purchasing a regulated service and was not intended to be applied so broadly as to encompass circumstances where there is merely a linkage between regulated and unregulated services, or where a condition is imposed on the unregulated service, not the regulated service. If some other result was

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<sup>5</sup> The statutes and rules the Hearing Officer relied upon in ruling that BellSouth was required to tariff the Select Program apply to public utilities in general. See Initial Order at 33. CLECs are public utilities as that term is defined by T.C.A. section 65-4-101(a), and the evidence presented during the hearing shows that among the various competitive offerings that are available to small business customers in Tennessee are package deals offered by CLECs. (Tr. at 88). AIN, for instance, offers its Tennessee small business customers interLATA toll service in addition to local and intraLATA toll service. (Tr. at 31). Additionally, XO's predecessor, Nextlink, offered a package of regulated and unregulated offerings that it marketed as "The Worx." Advertisements for this packaged offering stated

The Worx from Nextlink makes each desk in your office a telecommunications nerve center. Local calls. 1,000 minutes of *nationwide* local calling. Voice-mail. Internet access. Web Hosting. E-mail. All neatly organized on one phone bill. Simple. Easy. Convenient.

See Hearing Exhibit No. 1 (emphasis added).

intended, BellSouth requests that the Hearing Officer reconsider her opinion to limit its impact to the types of offerings in which BellSouth provides a non-tariffed value as a condition on the purchase of regulated services, such as the Hearing Officer found to be the case here.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

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### CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2002, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight
- ☐ Electronic

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